IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1670 OF 1999

Mr.Jaiprakash Maurya]
residing at Room No.1,]
Maruti Chawl, S.B.Road,]
Janta Market, Bhandup (W)]
Mumbai-400078]..Petitioner

Vs.

1. The Secretary]
Uttari Bharat Sabha]
Station Road, Bhandup]
Mumbai.]
]
2. The Headmaster,]
K.L.Mehra I.D.Uttari]
Bharat Sabha Hindi]
High School and Junior]
College, Station Road]
Bhandup, Mumbai-400078]
]
3. The Dy.Director of]

Education]
having his office at]
Government Press Bldg.]
Chaerni Road, Mumbai]
]

4. State of Maharashtra]
through its Department]
of Education and]
Employment Mantralaya]
Annexe, Mumbai-400032]
]

5. Shri.Vijaysingh]
Maharusingh Salunkhe]
C/o Youvaraj Maharu]
Salunkhe, Sainath]
Colony, Krishna Nagar]
Section 25, Ulhasnagar]
Dist.Thane]..Respondents

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Mr.Mihir Desai counsel for the Petitioner

Ms.M.Kajle AGP for State of Maharashtra

Mr.R.L.Nerlekar for Intervenor

Mr.I.S.Singh for Respondent Nos.1 and 2

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CORAM : DR.S.RADHAKRISHNAN AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : DECEMBER 11, 2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. In this petition filed under Article 226 of the Constitution of India, the petitioner is seeking the writ of mandamus, or directions in the like nature against respondent nos.3 and 4 to grant approval for his appointment to the post of Laboratory Assistant under respondent no.2 with effect from November, 1988 and consequently to set aside the order of termination dated 20.12.1999 issued by respondent no.1.

2. The petitioner on his completion of Higher Secondary School Examination (HSC), came to be appointed as a peon with effect from 23.8.1996 in the English Primary School run by respondent no.2-Trust. The petitioner was subsequently confirmed in the said post.

3. Respondent no.2 i.e. K.L.Mehra I.D.Uttari Bharat Sabha Hindi High School and Junior College, is also run by respondent Trust. In the year 1988, the post of Laboratory Assistant had fallen vacant in the

respondent no.2-Junior College. Hence, the petitioner along with others had applied for the said post. The selection committee interviewed all the candidates and found the petitioner to be the most suitable candidate. The petitioner came to be issued an appointment order dated 11th July, 1988 for the post of Laboratory Assistant on probation for one year. The petitioner submitted his resignation from the post of peon on 1.8.1998 and he joined the post of Laboratory Assistant. However, since June, 1999, the petitioner did not receive his monthly salary, therefore, he submitted his representation to the Head Master for payment of his salary.

4. By letter dated 28.6.1999 the petitioner was informed that the Deputy Director of Education had not granted approval to his appointment and therefore, he could not be paid salary. Finally, his service came to be terminated by order dated 20.12.1999.

5. The Assistant Director of Education, Greater Mumbai has filed his affidavit in reply and has opposed the petition whereas the respondent nos.1 and 2 by their affidavits have supported the petition.

Respondent nos.3 and 4 state that amongst the Class-IV employees under respondent no.1-Society, there were other peons who were more senior than the petitioner and therefore, the petitioner was illegally appointed by not considering the claim of the senior employees. In this regard, the name of respondent no.5 Shri.V.M.Salunkhe has been cited. They further claim that the appointment of the petitioner being illegal, approval was refused as per the communication dated 18.2.1998, 3.5.1998 and 3.12.1998.

6. On the other hand, respondent nos.1 and 2 have submitted before us that all the applications received for the post of Laboratory Assistant were considered and the School Selection Committee interviewed all of them i.e. six candidates on 10.7.1998. The Selection Committee found the petitioner to be the most suitable candidate amongst all the candidates interviewed and therefore, he was appointed to the post of Laboratory Assistant. The Note below Clause 3 of Schedule F to the Maharashtra Employees of Private School (Conditions of Service) Rules 1981, states that common seniority of non-teaching lower grade staff shall be maintained on

the basis of their dates of their appointments and if any of the lower grades staff improves his qualification as prescribed either for the post of Laboratory Assistant or Clerk such employee should be given preference while filling up the said post according to his place in the seniority. Where the Management runs more than one School, the seniority list for particular cadre shall be a combined seniority list of all persons in that cadre working in all the Schools of the Management. The details of the candidates working under the respondent-society and who had applied for the post of Laboratory Assistant are as follows:

Sr.No.	Candidate's Name	Educational Qualification
1.	Shri.Om Prakash Maurya	S.S.C. Pass
2.	Shri.Ramji Ram Bond	S.S.C. Pass
3.	Shri.Vinayak Sonawane	S.S.C. Fail
4.	Shri.Anilkumar Mishra	S.S.C. Pass
5.	Shri.Vijaysinh Salunke (Respondent No.5)	S.S.C.(Sci.)
6.	Shri.Jayprakash	

Maurya (Petitioner)	H.S.C.(Pass) (Science)

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7. We are required to consider whether the claim of respondent no.5 Shri.V.M.Salunkhe who was senior to the petitioner, was denied illegally by respondent nos.1 and 2. It is seen that though respondent no.5 is senior to the petitioner, he is less qualified than the petitioner. Respondent no.5 has passed S.S.C. (Science) that too in more than one attempt whereas the petitioner has passed his H.S.C. (Science). Thus for the post of Laboratory Assistant, the petitioner certainly possessed better qualification than respondent no.5. If respondent no.5 and the petitioner were similarly placed, it was the respondent no.5 who ought to have been given opportunity for appointment to the post of Laboratory Assistant. But such is not the case as respondent no.5 did not possess the qualification of H.S.C. (Science). We therefore, do not find any substance in the contention of respondent nos. 4 and 5 that the petitioner was illegally appointed to the post of Laboratory Assistant. From the affidavit in reply filed on behalf of respondent nos.1 and 2, it is

clear that the selection for the post was by nomination and all the applicants who were employees under the respondent, were interviewed by the School Committee which found the petitioner to be the most suitable candidate. Under these circumstances, the order dated 3.12.1998 passed by the respondent no.3 rejecting the approval to the post of the petitioner is unsustainable.

8. While admitting this petition, the petitioner was directed to be continued with further directions to pay his monthly salary and accordingly, he is in service as at present. In any case, the order of termination dated 28.12.1999 was based on the rejection of the approval by respondent no.3, which action was found to be illegal by us.

9. In the premises, this petition succeeds and the same is hereby allowed. The order dated 3.12.1998 passed by respondent no.3 is hereby quashed and set aside and consequently, the order of termination dated 28.12.1999 also stands set aside. Rule is made absolute in terms of prayer clause (a).

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]